ALBERTA PUBLIC HEALTH ADVISORY AND APPEAL BOARD

ANNUAL REPORT

1985 - 1986

6th Floor, Donsdale Place
10709 Jasper Avenue
Edmonton, Alberta.
T5J 3N3

Telephone: (403) 427-2813

Alberta
PUBLIC HEALTH APPEAL &
ADVISORY BOARD

Seventh Street Plaza, 10030 - 107 Street, Edmonton, Alberta, Canada T5J 3E4 403/427-2709

In Replying Please Quote:

8th Floor

September 30, 1986

The Honourable Jim Dinning
Minister
Department of Community and Occupational Health
Room 424 Legislature Building
Edmonton, Alberta.

Dear Mr. Dinning:

It is my pleasure, on behalf of the members of the Alberta Public Health Advisory and Appeal Board, to submit the Annual Report of the Board.

The Board would be pleased to meet with you at any time to discuss the report if you so wish.

Yours sincerely,

ALBERTA PUBLIC HEALTH ADVISORY AND APPEAL BOARD

Dr. T. John Walker
Chairman

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ESTABLISHED

The Public Health Advisory and Appeal Board was established on August 1, 1985 under Section 2 of the Public Health Act, Chapter P-27.1 R.S.A. 1980.

MANDATE

The duties and mandate of the Board are as follows:

1. To advise the Minister on matters pertaining to the public health;
2. On the request of the Minister, to make investigations or inquiries into, collect information relating to, or conduct research into any matter relating to the public health, and make its report in the manner and at the time specified by the Minister;
3. On the request of the Lieutenant Governor in Council, to hold public hearings for the purpose of receiving submissions on matters pertaining to the public health specified in the order, and make its report to the Minister in the manner and at the time specified in the order;
4. To hear appeals pursuant to Section 4 of the Public Health Act.

MEMBERSHIP

The members of the Board represent Alberta citizens from all

walks of life and many various occupations. All current members have been appointed for a three year term effective August 1, 1985. The current membership is as follows:

Name	Occupation	Residence
Dr. John Walker, Chairman	Physician	Fort Macleod
Mr. Max McCann, Vice-Chairman	Restaurateur	St. Albert
Mrs. Barbara Cumberland	Businesswoman/Nurse	Red Deer
Dr. Sergi Causing	Physician	Edmonton
Mr. Gerry Blum	Architect	Calgary
Mrs. Kathleen Clarke	Businesswoman/Nurse	Calgary
Mr. "Chick" Taylor	Business Executive	Medicine Hat
Mr. Norman Maloney	Lawyer	Calgary
Mr. Robert Field	Engineer	Grande Prairie

STAFF AND CONSULTANTS

Ms. Shaun Dyke is Secretary to the Board. Mr. Ed Collom acts as Technical Consultant to the Board, and Mr. Donald Cranston acts as independent legal counsel to the Board.

ACTIVITIES

1. Initial Planning

Mr. George Cuff was retained as a Management Consultant to assist the Board in its initial organization and orientation. Meeting procedures and rules were developed. Meetings of the Board are held on a monthly basis, and appeals are heard within the statutory time limits unless otherwise agreed by the parties, or unless in special circumstances, the Board considers it appropriate to extend the time.

Mr. Ed Collom was retained to act as Technical Consultant to

the Board, and has acted in that capacity since the Board's inception.

Mr. Donald Cranston of Layton, Weeks & Cranston was retained as independent legal counsel to the Board to provide legal advice to the Board as required.

2. Appeals

Attached as Appendix "A" is a schedule briefly describing the appeals which have been dealt with by the Board through to August 1, 1986. The Board has and continues to make a concerted effort to develop a procedure for appeal hearings which allows for a full and fair hearing for all parties involved, and which preserves and fosters the impartiality of the Board.

3. Advisory Activities

To date, the Board has not been called upon by the Minister to hold public hearings, or to make investigations or conduct research under Sections 3(1)(b) and (c) of the Public Health Act. With the completion of the Board's first full year, it is the intent of the Board to actively fulfill its mandate to advise the Minister on matters pertaining to public health. Some of those matters which the Board is currently considering and which will be the subject of advice to the Minister include the following:

1. Compulsary pasteurization of milk
2. Seatbelt legislation
3. Private sewage disposal systems
4. Distance requirements related to sub-divisions and waste management facilities and feed lots
5. The control of abattoirs
6. Generally, the various regulations under the Public Health Act

4. Other Activities

The Board through the last year has taken the opportunity to meet with a number of local health unit boards and their staff. Those meetings have been helpful in serving to explain the mandate and appeal processes of the Board. To date, meetings have been held with the following local boards and their staff: Sturgeon, Alberta East Central, South Peace, Chinook and Calgary. It is the intention of the Board to visit all health units.

Members of the Board attended the convention of the Health Units Association of Alberta from the 19th to the 21st of November, 1985. The meeting was held in Calgary and was of great educational value to all members.

The distribution of all appeal decisions of this Board as well as all waiver decisions of local health units are disseminated through the Health Unit Association of Alberta to local boards. The Board is hopeful that the provision of that information will be of assistance to the various local health units, and serve to advance the administration of public health in Alberta.

CONCLUSION

The Board has accepted its responsibility enthusiastically and with increasing confidence. It acknowledges the assistance of the Deputy Minister and staff of the Department of Community and Occupational Health.

The Board looks forward to its second year term.

APPENDIX "A"

APPEAL DECISIONS OF THE PUBLIC HEALTH ADVISORY AND APPEAL BOARD FROM AUGUST 1, 1985 THROUGH TO AUGUST 1, 1986

1. City of Calgary and Genstar Corporation

Appeals from a decision of the Provincial Board of Health dated June 19, 1985 granting approval of a preliminary outline of a proposed refuse disposal system to Browning-Ferris Industries Ltd. were filed by the City of Calgary and Genstar Corporation. The hearing was held on October 16, 1985. The grounds for the appeals included the following:

a) The approval was not in the public interest;

b) The approval would have a negative impact upon the development of adjacent lands;

c) The sanitary landfill site was an incompatible use related to the lands and the surrounding area;

d) The proposed sanitary landfill lay within 450 metres in an area designated for residential development;

e) There is no justification or need for an additional sanitary landfill site.

The decision of the Provincial Board of Health was upheld.

A certiorari application was subsequently brought before Mr. Justice O'Leary of the Court of Queen's Bench of Alberta. By a decision dated February 25, 1986, Mr. Justice O'Leary quashed the decision of the Board. In doing so, Mr. Justice O'Leary made the following observation:

> "The Waste Management Regulation apparently permits the approval and operation of waste management facilities in circumstances requiring all or a portion of the 450 metre setback to be provided by adjoining land owners without provisions for any compensation. In this case, if B.F.I. is permitted to develop and operate the landfill site as proposed, Genstar's land will be partially sterilized in respect of those uses enumerated in Section 3(1). This is obviously an eventuality not contemplated, much less intended, by those who drafted the legislation. Surely a person seeking to develop and operate a waste management facility should be compelled to provide the mandatory setback on his own land and not be allowed to expropriate his neighbor's land, without compensation, for that purpose".

The decision of Justice O'Leary is currently under appeal to the Alberta Court of Appeal.

2. C.J. Libby and M.G. Coates

The Leduc-Strathcona Health Unit granted an approval of a piggery operation to Mr. W. Poettcker on May 27, 1985. C.J. Libby and M.G. Coates appealed that approval. Grounds for the appeals included the following:

a) The piggery operation was located in an area within 1,500 feet of residences owned by the Appellants.

The hearing was held on October 3, 1985. It was the decision of the Board that the Leduc-Strathcona Health Unit took into account all appropriate considerations required under the Public Health Act and its regulations, but at the time of the approval, did not have the jurisdiction to grant a waiver of the setback requirement found in the regulation respecting the keeping of livestock and poultry. Since August 1, 1985, jurisdiction to grant such a waiver was vested with the local health units, and accordingly, the operator was directed that if he wished a waiver of the setback requirements, his application must be made before the local board of health.

3. Town of Whitecourt

The Stony Plain-Lac Ste. Anne Health Unit issued an order to the Town of Whitecourt dated October 31, 1985, directing the Town to cease burning at a waste management facility. The Town of Whitecourt appealed that decision, and the hearing was held on November 13, 1985. The grounds for the appeal included the following:

a) Occasional permits to burn if issued were for a short time only, and resulted in a major expenditure of funds to extinguish fires after each permit expired.

b) By allowing large volumes of refuse to accumulate, the risk of contamination, fire and litter dramatically increased.

c) It is reasonable to permit burning during winter months while the Town develops a regional landfill site.

The Board confirmed the local health unit order.

4. Sprucewood Farms Ltd.

The Stony Plain-Lac Ste. Anne Health Unit issued an order dated October 24, 1985 concerning the discharge and storage of manure on a farm owned by Sprucewood Farms Ltd.

The hearing was held on November 6, 1985. The grounds for

appeal included the following:

a) The Appellant has been conducting its operation since 1963, and there is no evidence of any public health concern.

b) The disposal of poultry manure in its present manner did not constitute a nuisance.

c) Any change required in the handling of the manure would be prohibitively expensive, and would destroy the Appellant's business operations.

The Board reversed the decision of the local health unit, and the discharge and storage of manure was allowed to continue with conditions imposed by the Board.

5. Rocky View Municipal District No. 44

The Mount View Health Unit declined to allow a development of a waste management facility by the Rocky View Municipal District No. 44. The appeal hearing was held on March 6, 1986. The grounds for the appeal included the following:

a) The information contained in the application supported the need for approval of the waste management facility.

b) Hydrogeological testing carried out by Alberta Environment stated the site was suitable.

The Board referred the matter back to the local health unit, directing that further information be accumulated to properly assess the application.

6. Bruce and Kim McLean

The South Peace Health Unit issued a permit to operate a modified landfill site to the County of Grande Prairie. Bruce and Kim McLean appealed that permit, and the hearing was held on May 5, 1986. The grounds for the appeal included the following:

a) Potential contamination of the area water supply, as hydrogeological assessment of the site was incomplete.

b) Close proximity of the site to the County recreational area.

c) The site was located within 450 metres of a recreational area where food was prepared and consumed.

d) The proposed site would sterilize the McLean's

lands with regard to the construction of a permanent residence.

The Board reversed the decision of the Health Unit.

7. Tiny Tym's Poultry Ltd.

The Vegreville local health unit issued an order to cease manufacturing and distributing smoked fish, chicken and beef products to Tiny Tym's Poultry Ltd. The hearing was held on May 20, 1986. The grounds for the appeal included the following:

a) The Appellant wished to continue manufacturing and distributing smoked food products in farmer market facilities only.

b) The Appellant would then be able to realize a certain amount of income to allow him to improve the premises to meet required standards.

The Board confirmed the local health unit decision, and made additional recommendations to both the local health unit and the Appellant.

8. Rae-Dawn Construction Ltd.

Leduc-Strathcona Health Unit refused to grant a permit to operate a waste management facility to Rae-Dawn Construction Ltd. The appeal hearing was conducted on June 4, 1986. The grounds for the appeal included the following:

a) The Appellant is able to provide supervision, staff and equipment to ensure that the site does not become a nuisance.

b) The Appellant has not and will not permit the deposit of putrescible materials or kitchen garbage on the site.

c) Any access to the site to allow any unapproved dumping is due to circumstances beyond the control of the Appellant.

The Board reversed the decision of the local health unit, and allowed the permit with a number of conditions.

9. Alberta Hide Processors Ltd.

The Barons-Eureka-Warner Health Unit issued an order to clean up materials and refrain from further dumping to Alberta Hide Processors Ltd. The appeal hearing was conducted on July 3, 1986. The grounds for the appeal

included the following:

a) The Appellant sells the materials in question to Granum Products Ltd., and has no further involvement with their disposal or use.

b) The Appellant is not an owner of the property in question.

The Board reversed the decision of the local health unit.

10. The City of Calgary, Genstar Corporation, Isidor Koschitzky and James Burns

The Foothills Health Unit issued an operating permit concerning a waste management facility to Browning-Ferris Industries Ltd. dated November 12, 1985. A stay application was brought by the Appellants, and the Vice-Chairman, upon hearing representations, issued a stay order pending hearing the appeals. The appeals were heard during the week of July 21, 1986. The grounds for the appeals included the following:

a) Operation of the landfill site is not in the public interest.

b) The operation of the landfill site would not meet the requirements of Section 3(1) of the Waste Management Regulation in that there is a dwelling being used for human habitation within 450 metres of the sanitary landfill site.

c) The intended method of operation will create a serious potential to harm the surrounding environment, including water tables.

The Board upheld the permit, with a number of further conditions imposed.

11. Other Matters

There were several further applications or approaches to the Board that did not result in appeals, and were referred to the appropriate local health unit.